



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2013

Ms. L. Carolyn Nivens
Paralegal
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056

OR2013-18219

Dear Ms. Nivens:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 502846 (City's Ref. No. PD#2920; Ross, Banks File No. 3607-1/A).

The League City Police Department (the "department"), which you represent, received a request for information related to a specified address and two named individuals, excluding information pertaining to a particular incident. You state the department will make available to the requestor some responsive information. You further state the department will withhold motor vehicle record information pursuant to subsection 552.130 of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

²Although you also raise section 552.023 of the Government Code, we note section 552.023 is not an exception to disclosure under the Act. *See* Gov't Code § 552.023.

Section 552.108 of the Government Code provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication.

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2). Subsections 552.108(a)(1) and 552.108(b)(1) are mutually exclusive of subsections 552.108(a)(2) and 552.108(b)(2). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with law enforcement and prosecution efforts in general. In contrast, subsections 552.108(a)(2) and 552.108(b)(2) protect information that relates to a concluded criminal investigation or prosecution that did not result in a conviction or deferred adjudication. A governmental body claiming an exception under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also Ex parte Pruitt* 551 S.W.2d 706 (Tex. 1977).

You assert case number 07-0466 is “inactivated pending further evidence” and “resulted in no conviction or deferred adjudication.” You seek to withhold case number 07-0466 from disclosure under subsections 552.108(a)(1) and 552.108(a)(2). Because you have provided this office with conflicting representations, we are unable to determine whether case number 07-0466 relates to an ongoing criminal case or a closed case that did not

result in conviction or deferred adjudication. Thus, we find you have failed to demonstrate the applicability of subsection 552.108(a)(1) or subsection 552.108(a)(2) to case number 07-0466. Accordingly, the department may not withhold case number 07-0466 under section 552.108 of the Government Code.

You state case number 09-5549 “was prepared in relation to an investigation that did not result in conviction or deferred adjudication.” You further state the four calls for service in Exhibit A relate to cases in which “no arrests were made” and which “did not result in any convictions or deferred adjudication[.]” Based upon your representations, we find the department has demonstrated case number 09-5549 and Exhibit A pertain to closed cases that ended in results other than conviction or deferred adjudication.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of the basic front-page offense and arrest information, the department may withhold case number 09-5549 and Exhibit A under subsection 552.108(b)(2) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. encompasses the common-law informer’s privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer’s identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to “administrative officials having a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5. However, individuals who provide information in the course of an investigation but do not make the initial report of the violations are not informants for the purposes of claiming the informer’s privilege. The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. Open Records Decision No. 549 at 5 (1990).

You contend the identifying information of the complainants is protected by the common-law informer's privilege. You assert the information at issue identifies individuals who reported violations of law to the department. Upon review, we find some of the information reflects the subject of the complaint knows the identity of the complainant. Furthermore, you do not inform us what criminal or civil statutes were reported to be violated in the remaining reports. Therefore, we find the submitted information does not identify an informer for the purposes of the informer's privilege. Accordingly, the department may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

In summary, with the exception of the basic front-page offense and arrest information, the department may withhold case number 09-5549 and Exhibit A under subsection 552.108(b)(2) of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 502846

Enc. Submitted documents

c: Requestor
(w/o enclosures)